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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

ADIDAS AMERICA, INC., a Delaware corporation; **ADIDAS AG**, a foreign entity; **ADIDAS INTERNATIONAL MARKETING B.V.**, a foreign entity; **REEBOK INTERNATIONAL LTD.**, a Massachusetts corporation; and **REEBOK INTERNATIONAL LIMITED**, a foreign entity,

Plaintiffs,

v.

TRB ACQUISITIONS LLC, a New York limited liability company,

Defendant.

No. 3:15-CV-02113-SI

**PLAINTIFFS' SECOND REQUESTS
FOR PRODUCTION OF DOCUMENTS
AND THINGS**

Pursuant to Fed. R. Civ. P. 34

1- PLAINTIFFS' SECOND REQUESTS FOR PRODUCTION OF
DOCUMENTS AND THINGS

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Pursuant to Federal Rule of Civil Procedure 34 and Local Rule 34, Plaintiffs adidas America, Inc., adidas AG, adidas International Marketing B.V., Reebok International Ltd., and Reebok International Limited request that Defendant TRB Acquisitions LLC produce and permit Plaintiffs' counsel to inspect and copy the documents and things designated below. The documents shall be produced at the offices of Kilpatrick Townsend & Stockton, LLP, 1100 Peachtree Street, Suite 2800, Atlanta, Georgia 30309, or at another mutually agreed upon location, within thirty (30) days after the date of service of this request.

I. DEFINITIONS

1. "adidas" means adidas AG and its subsidiaries and affiliates, including adidas America, Inc., adidas International Marketing B.V., and all of their respective officers, directors, employees, agents, representatives, attorneys, parent corporations, subsidiaries, affiliates, divisions, subgroups, successors, and assigns.

2. "Reebok" means Reebok International Ltd. and its subsidiaries and affiliates, including Reebok International Limited, and all of their respective officers, directors, employees, agents, representatives, attorneys, parent corporations, subsidiaries, affiliates, divisions, subgroups, successors, and assigns, excluding adidas.

3. "Plaintiffs" means adidas and Reebok.

4. "TRB" means TRB Acquisitions LLC and each of its corporate affiliates, divisions, subgroups, wholly owned or partially owned subsidiaries, parent corporations, owners, area or regional offices, predecessors-in-interest, successors, assignees, agents, intermediaries, legal representatives, trustees, consultants, and all representatives and other persons acting on its

behalf, and the present and former officers, servants, and employees of each of the entities referenced in this paragraph.

5. “Licensee” means any Person to whom Defendant authorized, granted, or licensed the right to design, manufacture, produce, offer for sale, and/or sell a Disputed Product.

6. “Rugged Bear” means The Rugged Bear Company f/d/b/a RB Acquisition Corp. and each of its corporate affiliates, divisions, subgroups, wholly owned or partially owned subsidiaries, parent corporations, owners, and predecessors-in-interest.

7. “Document” includes “things” and shall have the broadest possible construction under Rule 34(a) of the Federal Rules of Civil Procedure and includes, without limiting the generality of the foregoing, the original and all copies, drafts, and translations of any document in any written, recorded, or graphic form, including memoranda and notes of oral conversations, as well as compilations, catalogs, and summaries of information or data, whether typed, handwritten, printed, recorded, or otherwise produced or reproduced, and any other retrievable data (whether e-mail, discs, tapes, cards, or data coded electrostatically, electromagnetically, optically, or otherwise). “Document” also means any nonidentical copy thereof. Designated documents are to be taken as including all attachments, exhibits, enclosures, appendices, and other documents that relate to or refer to such designated documents. The enumeration of various specific items as included within the definition of the word “documents” shall not be taken to limit the generality of this word, and the requests herein are directed and intended to obtain all “documents” in the broadest and most comprehensive sense and meaning of this word.

8. “Disputed Stripe Design” means the TRB design depicted in Paragraph 8 of the Complaint, as well as any other TRB design incorporating 2, 3, or 4 parallel or substantially

parallel stripes running vertically down an item of apparel (e.g., the sleeve of a top or the outseam of a pant) or in the midfoot portion of the upper of footwear.

9. “RBX Logo” means the logo depicted in Paragraph 7 of the Complaint.
10. “RBX Mark” means any word, mark, or designation incorporating the letters “RBX.”
11. “Disputed Marks” means the Disputed Stripe Design, the RBX Logo, and the RBX Mark.
12. “Disputed Product” means a product bearing one or more of the Disputed Marks that has been offered for sale or sold by Defendant or a Licensee.
13. “Plaintiffs’ Marks” means the trademarks described and depicted in Paragraphs 20–54 of Complaint and Exhibits 1–21 to the Complaint.
14. The terms “any” and “all” shall be mutually interchangeable and shall not be construed to limit any Request.
15. “Including” shall mean “including but not limited to” and “including without limitation.”
16. “Refer or relate” means concerning, regarding, referring to, relating to, discussing, noting, about, with respect to, mentioning, describing, evidencing, or constituting.
17. “Customer” means any wholesaler, retailer, distributor, website, or other outlet to whom a Disputed Product has been sold.

II. INSTRUCTIONS

The instructions set forth in Plaintiffs’ First Requests for Production of Documents and Things apply also to these Second Requests.

4- PLAINTIFFS’ SECOND REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS

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III. DOCUMENT REQUESTS

91. Documents sufficient to identify the article, style, SKU, or other identifying number for each Disputed Product.

92. Documents sufficient to identify TRB's competitors with regard to sales of Disputed Products.

93. Documents that refer or relate to any research concerning the U.S. market for athletic footwear, including documents that refer or relate to market size, TRB's market share, competitor's market share, market potential, market segments, and/or current or anticipated trends that may impact demand.

94. Documents that refer or relate to any research concerning the U.S. market for athletic apparel, including documents that refer or relate to market size, TRB's market share, competitor's market share, market potential, market segments, and/or current or anticipated trends that may impact demand.

95. Documents that refer or relate to consumer opinion or perception of athletic footwear, including trends, factors that influence purchasing decisions, the role and importance of brand names, and desired attributes.

96. Documents that refer or relate to consumer opinion or perception of athletic apparel, including trends, factors that influence purchasing decisions, the role and importance of brand names, and desired attributes.

97. Documents that refer or relate to any research, including studies or surveys, concerning the price elasticity of demand for athletic footwear.

98. Documents that refer or relate to any research, including studies or surveys, concerning the price elasticity of demand for athletic apparel.
99. Any strategic business plans that refer or relate to Disputed Products.
100. Any marketing plans that refer or relate to Disputed Products.
101. Documents that refer or relate to forecasts or projections of sales, revenue, or profit for the Disputed Products.
102. Documents sufficient to identify all revenues earned by TRB (or any business unit of TRB) in connection with the Disputed Products.
103. Documents sufficient to identify all costs or expenses – whether fixed or variable – incurred by TRB (or any business unit of TRB) in connection with the Disputed Products, including profit and loss statements.
104. Documents sufficient to identify the profit margin realized by TRB (or any business unit of TRB) in connection with the Disputed Products, including contribution margin statements.
105. Documents sufficient to identify the net profits earned or the net losses suffered by TRB (or any business unit of TRB) in connection with the Disputed Products, including income statements.
106. Documents sufficient to show (i) the number of units and (ii) the dollar value of Disputed Products returned to TRB. If available, please produce the information by month, by year, and by Customer for each Disputed Product.

107. Documents sufficient to show the discounts or allowances applied by TRB to the sales price of any of the Disputed Products. If available, please produce the information by month, by year, and by Customer for each Disputed Product.

108. Documents sufficient to identify TRB's monthly net sales by Customer for each Disputed Product.

109. Documents sufficient to identify TRB's annual net sales by Customer for each Disputed Product.

110. Documents that refer or relate to the value or valuation of the RBX Logo.

111. Documents that refer or relate to the value or valuation of the RBX Mark.

112. Documents that refer or relate to the value or valuation of a Disputed Stripe Design.

113. Documents that refer or relate to the value or valuation of any intangible asset(s) owned or licensed by TRB -- other than the Disputed Marks -- used on the Disputed Products.

114. Documents that refer or relate to the value or valuation of any of Plaintiffs' Marks.

115. Documents that refer or relate to TRB's efforts to account for the intangible value of the RBX Logo, including goodwill.

116. Documents that refer or relate to TRB's efforts to account for the intangible value of the RBX Mark, including goodwill.

117. Documents that refer or relate to TRB's efforts to account for the intangible value of any Disputed Stripe Design, including goodwill.

118. Documents that refer or relate to TRB's efforts to account for the intangible value of any of Plaintiffs' Marks, including goodwill.

119. Documents that refer or relate to TRB's approval of the appearance, design, or placement by a Licensee of one or more of the Disputed Marks on a Disputed Product.

120. Documents that refer or relate to TRB's approval of the appearance, design, or placement by a Licensee of one or more of the Disputed Marks on packaging, labels or tags for a Disputed Product.

121. Documents that refer or relate to TRB's disapproval of the appearance, design, or placement by a Licensee of one or more of the Disputed Marks on a Disputed Product.

122. Documents that refer or relate to TRB's disapproval of the appearance, design, or placement by a Licensee of one or more of the Disputed Marks on packaging, labels or tags for a Disputed Product.

123. Documents that refer or relate to TRB's efforts to review, monitor, or control the quality of Disputed Products designed, manufactured, produced, distributed, offered for sale or sold by Licensees.

124. Documents regarding the purchase, transfer of assets, merger, or acquisition of Rugged Bear by TRB, including any due diligence concerning the RBX Mark or the RBX Logo.

DATED: May 18, 2016

By: 

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **PLAINTIFFS' SECOND REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS** on:

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Attorneys for Defendants

by causing a full, true, and correct copy thereof, addressed to the last-known office address of the attorney or registered agent, to be sent by the following indicated method or methods (unless indicated otherwise above), on the date set forth below:

☐ By **mailing** in a sealed, first-class postage-prepaid envelope and deposited with the U. S. Postal Service at Portland, Oregon.

☒ By **email transmission** to TRB-ADIDAS@arentfox.com, DavisK@LanePowell.com, mehrbanip@LanePowell.com.

☐ By **hand delivery**.

DATED: May 18, 2016

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10- PLAINTIFFS' SECOND REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS

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